

NOV 2 2006

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION  
COMMISSION  
CLERK

2006 NOV -2 A 9 11

In the Matter of )

Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.<sup>1</sup>)

Otto Candies, L.L.C.<sup>2</sup>)

Clean Tank, L.L.C.<sup>3</sup>)

Land Glo, L.L.C.<sup>4</sup>)

MUR 5652

**SENSITIVE**

GENERAL COUNSEL'S REPORT #3

**I. ACTIONS RECOMMENDED:**

1. Accept the attached signed conciliation agreement with Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.
2. Accept the attached signed conciliation agreement with Otto Candies, L.L.C.
3. Take no further action with respect to Clean Tank, L.L.C.
4. Take no further action with respect to Land-Glo, L.L.C.
5. Close the file with respect to Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.; Otto Candies, L.L.C.; Clean Tank, L.L.C.; and Land-Glo, L.L.C.

**II. DISCUSSION**

<sup>1</sup> The initial response to the Commission's Reason to Believe finding from Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P. is attached.

After we received responses to the Commission's findings, we began pre-probable cause conciliation with all Respondents. As this Office indicated in a December 8, 2005 memorandum to the Commission, some of the respondents in this matter, including the Respondents discussed in this General Counsel's Report, became unreachable during our 2005 conciliation negotiations as a result of Hurricane Katrina. We granted extensions of time to Respondents' respective counsel, and were able to resume negotiations in mid 2006. We have reached resolution with the respondents named in this report.

<sup>2</sup> Response to the Commission's Reason to Believe finding is attached. In this response, Respondent initially disputed the Commission's finding. However, during subsequent negotiations the Respondent acknowledged violations of the Act, and as discussed in this General Counsel's Report, Respondent has signed the Conciliation Agreement and tendered a civil penalty.

<sup>3</sup> This Respondent did not formally submit a response to the Commission's Reason to Believe finding.

<sup>4</sup> This Respondent did not formally submit a response to the Commission's Reason to Believe finding.

[REDACTED]

28044211798

1        This matter is the result of an audit of Terrell for Senate ("the Committee"), which was  
2        conducted by the Audit Division of the Federal Election Commission ("the Commission")  
3        pursuant to 2 U.S.C. § 438(b).<sup>5</sup> Based on information set forth in the audit report, the  
4        Commission found reason to believe that several Respondents, including Chaffe, McCall,  
5        Phillips, Toler & Sarpy, L.L.P.; Otto Candies, L.L.C.; Clean Tank, L.L.C.; and Land-Glo, L.L.C.,  
6        made prohibited or excessive contributions to the Committee.

7        After a period of conciliation, this Office recommends that the Commission accept signed  
8        conciliation agreements with Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P. and Otto Candies,  
9        L.L.C.; take no further action with regard to Clean Tank, L.L.C. and Land-Glo, L.L.C.; and close  
10       the file as to these respondents.

11        **A.    Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.**

12       The Commission found reason to believe that Chaffe, McCall, Phillips, Toler & Sarpy,  
13       L.L.P. ("Chaffe McCall") violated 2 U.S.C. § 441a(a)(1)(A) by making a \$5,000 contribution to  
14       the Committee that exceeded the contribution limits of the Federal Election Campaign Act of  
15       1971, as amended ("the Act"). The Commission also authorized this Office to enter into pre-  
16       probable cause conciliation with Chaffe McCall.

17       [REDACTED]  
18       [REDACTED]  
19

---

<sup>5</sup> The facts relevant to this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, the activity prior to BCRA is subject to the provisions of the Act as it existed at that time and the activity after BCRA is subject to the Act as amended by BCRA. However, the statutory provisions and Commission regulations at issue were not amended by BCRA in a manner relevant to the activity in this matter.

[REDACTED]

Accordingly, this Office recommends that the Commission accept the signed conciliation agreement and close the file as to this respondent.

**B. Otto Candies, L.L.C.**

The Commission found reason to believe that Otto Candies, L.L.C. ("Otto Candies") violated 2 U.S.C. § 441b(a) by making \$19,000 in corporate contributions to the Committee.

The Commission also authorized this Office to enter into pre-probable cause conciliation with Otto Candies [REDACTED]

[REDACTED]

28044211800

28044211801



**C. Clean Tank, L.L.C. and Land-Glo, L.L.C.**

The Commission found reason to believe that both Clean Tank, L.L.C. ("Clean Tank") and Land-Glo, L.L.C. ("Land-Glo") violated 2 U.S.C. §441b(a) by making corporate contributions to the Committee [REDACTED]

[REDACTED]

The Commission's reason to believe findings were based on information the Audit Division obtained from the Committee and the Committee's Amended 2002 Year-End Report, in which the Committee reported that Clean Tank made a \$10,000 corporate contribution and that Land-Glo made a \$4,000 corporate contribution.

The Commission's regulations establish two possible treatments for contributions by business entities that are recognized as limited liability companies under the laws of the State in which they are established. 11 C.F.R. § 110.1(g)(1). The treatment depends on how the firm

1 elects to file with the IRS. *Id.* at 110.1(g)(2). If the contribution is from an LLC filing with the  
2 IRS as a partnership pursuant to 26 C.F.R. § 301.7701-3, it shall be treated as a partnership  
3 contribution pursuant to 11 C.F.R. § 110.1(e). *Id.* If the contribution is from an LLC electing to  
4 file with the IRS as a corporation, the contribution is prohibited. 2 U.S.C. § 441b(a) and  
5 11 C.F.R. § 110.1(g)(3). In this matter, Clean Tank and Land-Glo each provided documentation  
6 demonstrating that they file with the IRS as partnerships, not as corporations.<sup>6</sup> Accordingly, the  
7 contributions from Clean Tank and Land-Glo are not prohibited corporate contributions, but are  
8 subject to the Act's limitations on contributions from partnerships. *See* 2 U.S.C. § 441a(a)(1)(A)  
9 and 11 C.F.R. § 110.1(g)(2).

10 Available information originally indicated that both Clean Tank and Land-Glo made  
11 contributions directly to the Committee. However, our investigation has revealed that the  
12 contributions were in fact made to the Louisiana Victory Fund ("LVF").<sup>7</sup> The LVF was a  
13 committee authorized to conduct joint fundraising for the Committee, the National Republican  
14 Senatorial Committee ("NRSC"), and the Louisiana Republican Party ("LRP"). LVF was to act  
15 as the "fundraising representative" for each of its three members. Clean Tank and Land-Glo  
16 received a solicitation from LVF, and responded by purchasing tickets to an event hosted by the  
17

---

<sup>6</sup> Clean Tank and Land-Glo provided portions of their 2002 Income Tax Returns (Form 1065) indicating that both entities have elected to file with the IRS as a partnership.

<sup>7</sup> Clean Tank and Land-Glo provided copies of canceled checks demonstrating that the contributions were made to LVF. The entities also provided a copy of the invitation to the event, and a copy of the letter accompanying the contributions, in which LVF is instructed as to the desired attribution of the contribution.

1 LVF. Both Clean Tank and Land-Glo also provided information regarding the allocation of the  
2 contribution to LVF, pursuant to the Commission's regulations at 11 C.F.R. § 110.1(g)(5).<sup>8</sup> The  
3 invitation to the event properly explained that the funds raised by this event would be allocated  
4 according to a pre-determined formula.<sup>9</sup> The solicitation also informed the potential contributors  
5 that if a contribution was determined to exceed the contribution limit of the individual to the  
6 recipient, the funds would be re-allocated to the next available participant eligible to receive the  
7 funds.

8 Pursuant to 11 C.F.R. § 102.17(c)(4), a fundraising representative is required to screen all  
9 contributions received to insure that the prohibitions and limitations of the Act are observed.  
10 Participating committees, in this case, the NRSC, the LRP, and the Committee, are required to  
11 make their contributor records available to the fundraising representative to enable proper  
12 screening of contributions and allocation of funds.

13 Available information does not indicate that LVF properly screened the contributions, and  
14 LVF did not allocate the contributions according to the solicitation sent to potential contributors.  
15 The failure of LVF to perform its duty as the "fundraising representative" resulted in excessive  
16 contributions when \$8,000 of Clean Tank's \$10,000 contribution, and all of Land-Glo's \$4,000  
17 contribution to LVF were transferred by LVF to the Committee. Pursuant to 2 U.S.C. § 441a(f),  
18

---

<sup>8</sup> A contribution by a partnership shall be attributed to the partnership and to each partner in one of two ways:  
1) in proportion to his or her share of the profits, according to instructions which shall be provided by the partnership  
to the political committee or candidate; or 2) by agreement of the partners, as long as only the profits of the partners  
to whom the contribution is attributed are reduced (or losses increased), and these partners' profits are reduced (or  
losses increased) in proportion to the contribution attributed to each of them. 11 C.F.R. § 110.1(e).

<sup>9</sup> According to the solicitation, the first \$3,000 of a legally permissible individual contribution was to be allocated  
to the Committee, the next \$5,000 of a legally permissible individual contribution was to be allocated to the LRP,  
and the next \$17,000 of a legally permissible individual contribution was to be allocated to the NRSC.

28044211803

1 the Committee also had a responsibility to determine whether the contributions exceeded the  
2 limitations of the Act. The Committee did not screen the contributions, and instead accepted the  
3 excessive contributions from Clean Tank and Land-Glo, through the allocation by LVF.<sup>10</sup>

4 Because both Clean Tank and Land-Glo have demonstrated that their contributions  
5 should be treated as partnership contributions rather than corporate contributions under the Act,  
6 and because the contributions by Clean Tank and Land-Glo were excessive as a result of LVF's  
7 failure to properly allocate the funds, we recommend that the Commission take no further action  
8 with respect to Clean Tank and Land-Glo, and close the file as to these respondents.

9 **III. RECOMMENDATIONS**

- 10 1. Accept the attached conciliation agreement with Chaffe, McCall, Phillips, Toler &  
11 Sarpy, L.L.P.  
12  
13 2. Accept the attached conciliation agreement with Otto Candies, L.L.C.  
14  
15 3. Take no further action with respect to Clean Tank, L.L.C.  
16  
17 4. Take no further action with respect to Land-Glo, L.L.C.  
18  
19 5. Close the file with respect to Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.;  
20 Otto Candies, L.L.C.; Clean Tank, L.L.C.; and Land-Glo, L.L.C.  
21

---

<sup>10</sup> It appears that the Audit Division included the excessive contributions attributed to Clean Tank and Land-Glo in the total excessive contributions accepted by the Committee resulting in a reason to believe finding in regard to the Committee. In the Committee's July Quarterly Disclosure Reports, the intent to refund the contributions to both Clean Tank and Land-Glo is reported as "Debts and Obligations." Recommendations regarding the Committee's liability will be discussed in a forthcoming General Counsel's Report.

28044211804

6. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

Rhonda J. Vosdingh  
Associate General Counsel  
for Enforcement

11/1/06  
Date

BY: Cynthia E. Tompkins  
Cynthia E. Tompkins  
Assistant General Counsel

Wanda Brown  
Wanda Brown  
Attorney

Kamau Philbert  
Kamau Philbert

Attachments:

- 1 - Conciliation Agreement - Chaffe McCall
- 2 - Civil penalty check - Chaffe McCall
- 3 - Conciliation Agreement - Otto Candies
- 4 - Civil penalty check - Otto Candies

